

ARTICLE X

Local Government

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Cross References - For statutory provisions relating to liberal construction and extent of local powers, see AS 29.35.400 - 29.35.420.

Decisions - Home rule is constitutionally recognized in Alaska. - State v. Jennings, 555 P.2d 248 (Alaska 1976).

Section encourages creation of borough governments. - Aside from the standards for incorporation in former AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. The Alaska Constitution encourages their creation. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

The supreme court reads this section to favor upholding organization of boroughs by the local boundary commission whenever the requirements for incorporation have been minimally met. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Boroughs are not restricted to the form and function of municipalities. - They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Intent of rule in second sentence. - The constitutional rule of liberal construction found in the second sentence was intended to make explicit the framers' intention to overrule a common-law rule of interpretation which required a narrow reading of local government powers. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

Taxing authority under former AS 29.48.010(7) consistent with second sentence. - The broad grant of taxing authority to municipalities under AS 29.48.010(7) (see now AS 29.35.010(6)), limited only by other provisions of law, was consistent with the second sentence of this section, which requires that "a liberal construction shall be given to the powers of local government." Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

There is no general prohibition against like municipal and state taxes. - Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

Power to impose civil penalty for failure to timely pay sales taxes. - The power of a municipality to impose a civil penalty for failure to timely file or pay sales taxes is granted primarily because this section requires that a liberal construction be given to the powers of municipalities, a rule of interpretation that is echoed by statute see now AS 29.35.400 - 29.35.420. Bookey v. Kenai Peninsula Borough, 618 P.2d 567 (Alaska 1980).

Discussion of state preemption of taxation by general-law municipalities. - See Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

The Public Employment Relations Act, AS 23.40.070 et seq., - is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of the Public Employment Relations Act - when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, ch. 113, Sec. 4, SLA 1972. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Purpose of statutes authorizing state land selection by borough or city. - The enactment of former AS 29.18.190 and 29.18.200, authorizing state land selection by a borough or city, was designed to further the goal of maximum local self-government reflected in this section. *North Slope Borough v. LeResche*, 581 P.2d 1112 (Alaska 1978).

Applied in *Jefferson v. State*, 527 P.2d 37 (Alaska 1974); *City of Kodiak v. Jackson*, 584 P.2d 1130 (Alaska 1978); *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

Quoted in *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970); *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971); *State, Pub. Offices Comm'n v. Marshall*, 633 P.2d 227 (Alaska 1981); *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981); *State v. Alex*, 646 P.2d 203 (Alaska 1982); *City of Anchorage v. Richards*, 654 P.2d 797 (Alaska Ct. App. 1982); *Municipality of Anchorage v. Afualo*, 657 P.2d 407 (Alaska Ct. App. 1983).

Stated in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Cited in *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962); *Gilman v. Martin*, 662 P.2d 120 (Alaska 1983); *Kenai Peninsula Borough v. State, Dep't of Community & Regional Affairs*, 751 P.2d 14 (Alaska 1988).

Section 2. Local Government Powers. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

AG Opinions - A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen. No. 1.

Decisions - Coexistence of cities and boroughs. - Section merely authorizes, but does not require, coexistence of cities and boroughs. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Borough defined. - The borough in Alaska is a political subdivision of the state for governmental purposes and corresponds generally to the county in other states. *Walters v. Cease*, 388 P.2d 263 (Alaska 1964).

Section limits taxing authority. - To implement the goal of nonduplication of taxing jurisdictions, this section limits taxing authority to organized boroughs and cities. No other local entities may tax. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978).

Legislative delegation of taxing power. - Legislature may not delegate its taxing power to entity other than borough or city. *State v. Alex*, 646 P.2d 203 (Alaska 1982).

Delegation of powers to arbitrator. - Provision in the Code of the Municipality of Anchorage providing for final and binding interest arbitration did not constitute an unconstitutional delegation of power to an arbitrator, since the Anchorage Municipal Charter did not contain any express limitation upon the Municipal assembly's power to delegate its legislative functions, the delegation in question was relatively narrow and related to the complex and potentially volatile subject of labor relations in the public sector, adequate

standards to guide the arbitrator's decision making were part of the delegation, and the arbitrator's decision was subject to discrete procedures and to judicial review. *Municipality of Anchorage v. Anchorage Police Dep't Employees Ass'n*, 839 P.2d 1080 (Alaska 1992).

Former section concerning royalty assessment on sale of salmon - impermissibly delegated taxing power to regional associations, in violation of this section. *State v. Alex*, 646 P.2d 203 (Alaska 1982).

The "local activity rule" - is an expedient method for resolving an impasse between state statutes which seek to further a specific policy and municipal ordinances which either directly or collaterally impede this implementation. *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

Applied in *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

Quoted in *Walters v. Cease*, 394 P.2d 670 (Alaska 1964).

Stated in *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962); *Begich v. Jefferson*, 441 P.2d 27 (Alaska 1968); *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Section 3. Boroughs. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Decisions - Purpose of section. - This section vests in the legislature power to prescribe procedures for borough incorporation without restriction. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

This section was not intended to operate as an exception to the "general law" rule of Alaska Const., art. II, Sec. 19. *Abrams v. State*, 534 P.2d 91 (Alaska 1975).

No exception to prohibition against local or special laws. - Alaska Const., art. II, Sec. 19 governs the exercise of all legislative powers expressly granted by other portions of the constitution. There is no intimation in its language or in the articles concerning local government which would create an exception to this prohibition against local or special laws. *Abrams v. State*, 534 P.2d 91 (Alaska 1975).

Borough defined. - The borough in Alaska is a political subdivision of the state for governmental purposes and corresponds generally to the county in other states. *Walters v. Cease*, 388 P.2d 263 (Alaska 1964).

Quoted in *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962); *Walters v. Cease*, 394 P.2d 670 (Alaska 1964).

Stated in *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Stated in *United States ex. rel. Norton Sound Health Corp. v. Bering Strait Sch. Dist.*, 138 F.3d 1281 (9th Cir. 1998), cert. Denied, U.S. , 119 S. Ct. 403, 142 L. Ed. 2d. 327 (1998).

Section 4. Assembly. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

Amendment Notes - The amendment effective October 14, 1972 (7th Legislature's SJR 52 (1972)) deleted the second and third sentences which specified city and non-city representation on the borough assembly.

Decisions - Cited in *Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979).

Section 5. Service Areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

AG Opinions - The legislature could establish school service areas in an unorganized borough by general law subject to the restrictive limitations of this section. 1961 Op. Att'y Gen. No. 24.

A home rule city does not have unreined authority to create service areas and impose a tax rate on that service area without complying with statutory law. December 8, 1986 Op. Att'y Gen.

Decisions – Incorporation of a city. – It is reasonable to interpret AS 29.35.450(b) and this constitutional provision as preferring incorporation of a city over the creation of new service areas. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

AS 29.05.021(b) is not in conflict with either AS 29.35.450(b) or this section of the Alaska Constitution; rather AS 29.35.450(b), which follows the language of this section, is a limitation on the creation of new service areas and in contrast, AS 29.05.021(b) is a limitation on the incorporation of cities. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Expansion of service area. – A municipality had the authority under its charter and ordinances to expand a police service area to include an area without a separate vote of that area's residents. *Area G Home & Landowners Org., Inc. v. Anchorage*, 927 P.2d 728 (Alaska 1996), cert. Denied, —U.S.—, 117 S. Ct. 1694, 137 L. Ed. 2d 821 (1997).

Applied in *Falke v. Fairbanks N. Star Borough*, 648 P.2d 597 (Alaska 1982).

Quoted in *Concerned Citizens v. Kenai Peninsula Borough*, 527 P.2d 447 (Alaska 1974); *State v. Alex*, 646 P.2d 203 (Alaska 1982); *Fairbanks N. Star Borough v. College Utils. Corp.*, 689 P.2d 460 (Alaska 1984).

Section 6. Unorganized Boroughs. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Decisions - Quoted in *State v. Alex*, 646 P.2d 203 (Alaska 1982).

Cited in *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793 (Alaska 1975).

Section 7. Cities. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Decisions - Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all

legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

This section and Sec. 9 distinguished. - The constitutional distinction between Sec. 9 of this article, granting the qualified voters of a first class city the right to adopt, amend, or repeal a home rule charter, and this section, providing that cities may be merged, consolidated or dissolved in the manner provided by the legislature, appears to be reflective of a policy which has as its objective the placement of decisional responsibility for local problems within local control and decisional responsibility for broader problems in control of a broader community. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

The phrase "dissolved in the manner provided by law," - is interchangeable with "in the manner provided by the legislature." *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Since this section says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dissolution. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

This section leaves the legislature free to determine - the manner of dissolution of cities. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Delegation of power to dissolve cities. - By placing the power to dissolve cities in the legislature, the constitution does not impliedly prohibit the legislature from delegating the power to others. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Applied in *Area Dispatch, Inc. v. City of Anchorage*, 544 P.2d 1024 (Alaska 1976).

Quoted in *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

Cited in *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

Section 8. Council. The governing body of a city shall be the council.

Section 9. Charters. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Decisions - This section and Sec. 7 distinguished. - The constitutional distinction between this section, granting the qualified voters of a first class city the right to adopt, amend, or repeal a home rule charter, and Sec. 7 of this article, providing that cities may be merged, consolidated or dissolved in the manner provided by the legislature, appears to be reflective of a policy which has as its objective the placement of decisional responsibility for local problems within local control and decisional responsibility for broader problems in control of a broader community. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the

constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

Cited in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Section 10. Extended Home Rule. The legislature may extend home rule to other boroughs and cities.

Section 11. Home Rule Powers. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

AG Opinions - A home rule municipality duly incorporated under the laws of Alaska may establish and operate a local housing authority so as to fall within the definition of "public housing agencies" under the 1974 revision of the United States Housing Act of 1937, P.L. 93-388, 42 U.S.C.A. Sec. 1437, 1437a(6). February 2, 1976 Op. Att'y Gen.

Mere inconsistency with a state statute is not sufficient to invalidate a municipal ordinance as unconstitutional. May 12, 1980 Op. Att'y Gen.

A home rule city has the power to enact an ordinance exempting from local taxation any class of real personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen. No. 1.

A Proposition 13 initiative which reads: "The municipality of _____ may not levy and tax for any purpose in excess of one percent of the assessed value of property within the municipality" would, as a practical matter, unconstitutionally impair the obligation of existing contracts any municipality has made to borrow money by general obligation bonds, and, additionally, would directly conflict with the policy adopted by AS 29.53.055 (now see AS 29.45.100) to levy such taxes at such rates as are required to repay general obligation bonds; as such, it would be void. August 29, 1978 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in this section on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. Sec. 1451 et seq. May 12, 1980 Op. Att'y Gen.

Decisions - Purpose of section. - This constitutional provision was adopted in order to abrogate traditional restrictions on the exercise of local legislative authority. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

A parallel provision - to this section was found in former AS 29.05.020. *City of Fairbanks v. Schrock*, 457 P.2d 242 (Alaska 1969).

Broad grant of authority. - The Alaska Constitution contains a broad grant of authority to municipalities. *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978).

Delegation of powers. - From the provisions of this section, it follows that the right of a municipal assembly to delegate powers to govern the affairs of a municipality will not be strictly construed, for without the power to delegate duty and discretion the affairs of the city could not be carried on. *Municipality of Anchorage v. Anchorage Police Dep't Employees Ass'n*, 839 P.2d 1080 (Alaska 1992).

Limits on exercise of municipal power. - Despite wide-ranging municipal power, the exercise of that authority is not insulated from possible invalidity when a conflict with state law occurs. *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978).

The city of Juneau acquired greater legislative power upon becoming a home rule city, but by the very terms of the constitutional grant of legislative power to a home rule city it was prohibited from exercising legislative powers prohibited by law. *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962).

Home rule cities are subject to the same limitations with respect to contracting debts as all other political subdivisions of the state. *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962).

Home-rule powers intended to be broadly applied. - See *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

But not intended to be preeminent. - See *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

Rejection of the doctrine of state preemption by "occupying the field" reaffirmed. - See *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

Alaska's home-rule provision is a "grant" or "sword" of legislative power - given to the municipality to be exercised as long as it is not prohibited by law. *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

This section distinguished from "shield" or "protection" provisions. - See *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

The test derived from Alaska's constitutional provisions is one of prohibition, - rather than traditional tests such as statewide versus local concern. *Jefferson v. State*, 527 P.2d 37 (Alaska 1974).

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. *Jefferson v. State*, 527 P.2d 37 (Alaska 1974); *Area Dispatch, Inc. v. City of Anchorage*, 544 P.2d 1024 (Alaska 1976); *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978).

The prohibition must be either by express terms or by implication - such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. *Jefferson v. State*, 527 P.2d 37 (Alaska 1974); *Area Dispatch, Inc. v. City of Anchorage*, 544 P.2d 1024 (Alaska 1976); *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978).

The "local activity rule" - is an expedient method for resolving an impasse between state statutes which seek to further a specific policy and municipal ordinances which either directly or collaterally impede this implementation. *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970); *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

The determination of whether a home rule municipality can enforce an ordinance which conflicts with a state statute depends on whether the matter regulated is of statewide or local concern. *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

Conflicts between state statutes and municipal ordinances - generally have been modulated by ruling in favor of the statutes. *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

Power of home rule city is measured by charter. - The meaning of this section is that, where a home rule city is concerned, the charter and not a

legislative act is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provision stating that a home rule city "may exercise all legislative powers not prohibited by law or by charter" (Alaska Const., art. X, Sec. 11), and then to say that the power of a home rule city is measured by a legislative act. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

The power to tax is a legislative power, - and the city of Anchorage, as a home rule city, is authorized by the constitution to "exercise all legislative powers not prohibited by law or by charter." *City of Anchorage v. Baker*, 376 P.2d 482 (Alaska 1962).

Limitation on taxes through initiative precluded. - Since a municipality, in its legislative capacity, is prohibited from enacting a limitation on taxes to pay bonds, then the people, acting through the initiative, in their legislative capacity, are similarly precluded. *Whitson v. Anchorage*, 608 P.2d 759 (Alaska 1980).

An ordinance providing in effect that no supplier could provide a customer with electric power, - if the providing of the service required an expenditure of moneys in excess of \$1,000 must yield to a determination by the Public Utilities Commission that the supplier could operate within the certified area, in light of conflicting statutes which invest in the Public Service Commission the power to regulate, to an extent permitted by law, the transmission of electric current. *Chugach Elec. Ass'n v. City of Anchorage*, 476 P.2d 115 (Alaska 1970).

Although inconsistency with state law is not normally the gauge - for determining validity of a local ordinance in Alaska, under the express terms of AS 28.01.010(a) it is clear that inconsistency is the standard that governs the validity of a local ordinance regulating the operation of a motor vehicle. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Effect of Revised Criminal Code. - The Revised Criminal Code does not address municipal powers and therefore cannot be construed to explicitly prohibit any municipal action. *Municipality of Anchorage v. Afualo*, 657 P.2d 407 (Alaska Ct. App. 1983).

Municipal ordinance penalizing solicitation of prostitutes by putative customers - is not prohibited by enactment of AS 11.66, art. 1 nor does it irreconcilably conflict with AS 11.66.100 which only penalizes prostitutes. *Municipality of Anchorage v. Afualo*, 657 P.2d 407 (Alaska Ct. App. 1983).

Concealment statute without specific intent. - Because Anchorage is a home rule municipality, the municipal assembly has the power, unless expressly or impliedly prohibited by state statute, to enact a concealment statute which does not require specific intent. *Smith v. Municipality of Anchorage*, 652 P.2d 499 (Alaska Ct. App. 1982).

This section did not prohibit the enactment of a concealment of merchandise ordinance since statewide uniformity was not a significant purpose of this section. *Smith v. Municipality of Anchorage*, 652 P.2d 499 (Alaska Ct. App. 1982).

Ordinance prohibiting concealment of weapons in automobiles. - AS 11.61.220 does not imply a legislative intent to create a privilege to conceal a weapon in an automobile, nor does it implicitly require state-wide uniformity of weapons regulations; thus, municipal ordinance interpreted as forbidding concealing of weapons in automobiles was not prohibited by AS 11.61.220. *City of Anchorage v. Richards*, 654 P.2d 797 (Alaska Ct. App. 1982).

Officeholder's eligibility for salaried appointment. - Home rule charter section which prohibited a person who holds or has held an elective city office from being eligible for appointment to an office or for employment for which a salary is paid by the city until one year has elapsed following the term for which he was elected or appointed, unless an exception is made with the approval of four or more members of the city council, was not preempted by

repealed AS 29.23.555 see now AS 29.20.010 since the charter also contained a section prohibiting members of the city council from voting on matters in which they have a pecuniary interest. *Acevedo v. City of N. Pole*, 672 P.2d 130 (Alaska 1983).

Ordinance providing for mandatory minimum sentence. - State law prohibits a city from enacting an ordinance providing for a mandatory minimum sentence. *City of Kodiak v. Jackson*, 584 P.2d 1130 (Alaska 1978).

Mandatory minimum sentences created by city ordinances are invalid when in conflict with state law. *Wright v. Municipality of Anchorage*, 590 P.2d 425 (Alaska 1979).

The mandatory aspects of the sentencing provisions of an ordinance providing for a mandatory minimum sentence on conviction of an assault of a police officer were irreconcilable with AS 12.55.080 - 12.55.085, in that the former could not be given its substantive effect if the latter were to be accorded the weight of law. Such being the case, the city was prohibited by this section from requiring the imposition and execution of mandatory minimum sentences for violations of the ordinance. *City of Kodiak v. Jackson*, 584 P.2d 1130 (Alaska 1978).

The fact that the state itself has the power to enact specific exceptions to AS 12.55.080 and 12.55.085 fails to prove that a home-rule city possesses the same power. *City of Kodiak v. Jackson*, 584 P.2d 1130 (Alaska 1978).

Making assignation a criminal offense. - There is no legislative enactment in Alaska that expressly prohibits a home rule city from making assignation a criminal offense. *Rubey v. City of Fairbanks*, 456 P.2d 470 (Alaska 1969).

Requiring school system to participate in centralized accounting. - A home rule borough may not require its school system to participate in centralized accounting without the statutorily required approval of the school board. *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971).

When a municipal charter is silent as to the mode of decision - on a matter committed to the legislative body, ordinance procedures are not ordinarily required. *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977).

Notice provisions for tort claims against municipalities. - Alaska Statutes 09.65.070, authorizing actions against municipalities, impliedly prohibits municipalities from requiring a potential plaintiff to submit notice of tort claims, as a condition to bringing an action, within a period shorter than the period provided by the statute of limitations. *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978); *DeHusson v. City of Anchorage*, 583 P.2d 791 (Alaska 1978).

A city charter provision which barred actions against the city unless the required notice of claims had been filed within 120 days after the injury occurred was invalid since the practical effect of the provision was to nullify the state legislature's establishment of a two-year period for commencing tort actions. That is, even though the two years permitted for commencing an action would still have applied through AS 09.65.070, the right to bring an action in Alaska's courts would have been contingent upon giving a notice of claim within a substantially shorter period of time. If the injured person had failed to give notice within the prescribed time, he would have been barred from pursuing his remedy in state courts, despite the fact that his action would have been timely under the two-year statute of limitations. *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978); *DeHusson v. City of Anchorage*, 583 P.2d 791 (Alaska 1978).

The Public Employment Relations Act, - AS 23.40.070 et seq., is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected

by employees unless the exemption was timely enacted. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of the Public Employment Relations Act when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, ch. 113, Sec. 4, SLA 1972. *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

The city of Anchorage - is not an office, department or agency of the executive branch of the state government under Alaska Const., art. III, Sec. 22 which deals with the executive power of the state. It is a home rule city with maximum local self-government, organized under this article of the constitution relating to local government. *Wellmix, Inc. v. City of Anchorage*, 471 P.2d 408 (Alaska 1970).

Applied in *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978); *Allstate Ins. Co. v. Municipality of Anchorage*, 599 P.2d 140 (Alaska 1979); *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Quoted in *State v. Browder*, 486 P.2d 925 (Alaska 1971); *Roderick v. Sullivan*, 528 P.2d 450 (Alaska 1974); *Tunley v. Municipality of Anchorage Sch. Dist.*, 617 P.2d 490 (Alaska 1980); *Anderson v. Municipality of Anchorage*, 645 P.2d 205 (Alaska Ct. App. 1982).

Cited in *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Section 12. Boundaries. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Cross References - For provisions concerning the local boundary commission, see AS 44.47.565 - 44.47.583.

Decisions - The intention of this section - and its implementing statute, AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The advantage of the method proposed, - in the words of the committee on local government, " * * * lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively." *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

The relevant minutes of the meetings of the committee on local government show clearly the concept that was in mind when this section was being considered: That local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

The concept that was in mind when this section was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968).

The framers of the Alaska Constitution thought that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

When method became operative. - The method for making boundary changes contemplated by this section was operative upon the enactment of the 1959 statutes creating a local boundary commission (SLA 1959, ch. 64, Sec. 7) and conferring powers upon it (SLA 1960, ch. 45). *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

This section established two methods by which local boundaries might be changed: - (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The local action provision of this section has been implemented - by legislation (AS 29.68.010) and by administrative action (19 AAC Sec. 15.010 et seq.). *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Section implemented by AS 44.47.567. - See *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Provisions of AS 44.47.567 and 44.47.583. - By AS 44.47.567 and 44.47.583, it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

This section empowers the legislature to veto commission actions. - *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Legislative review for compliance. - This section does nothing to compel the legislature to review for compliance with its own requirements. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

This section and AS 44.47.583 do not make the decision as to whether the commission has complied with the law exclusively legislative. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Veto power defined. - The legislative veto power granted in Alaska Const., art. III, Sec. 23 and this section, is the power to change statutes, not rule-making power, which is the power to interpret and implement statutes. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

Legislature handicapped in absence of known standards governing change of boundary lines. - Under Alaska's constitution, the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Annexation of community without consent of residents. - Residents of a community have no constitutionally protected interest in its existence as a separate governmental unit. Hence, the legislature may provide for the annexation of a community without its residents' consent. *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Administratively-selected method of annexation is controlling. - The selection of annexation method made by the commission and approved by the legislature is controlling. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Dissolution of utility district upon annexation. - The provision of former AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city" had application only where annexation took place under the petition-election procedure of former AS 29.70.010 to 29.70.240, and had no application where annexation takes place under a different method established by this section. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

Submission of an accepted incorporation petition to the legislature is not required - by the state constitution. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

The convention debating adoption of this article simply did not address the question of whether incorporation petitions must be submitted to the legislature. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Extension of city services. - All annexations will have the purpose and effect, in part, of extending city services. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The basic purpose for creating the boundary commission - and conferring upon it the powers that it possesses was to obviate the type of situation where there was a controversy over municipal boundaries which apparently could not be settled at the local level. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

This policy does not reach creation of an organized borough - from the nonfunctioning unorganized borough. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Carving a new unit of government from the unorganized borough generates no controversy between governments with competing economic and political interests. The conflicts accompanying boundary adjustments between two functioning governments which must be submitted to the legislature under this section do not afflict mere incorporation. *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska 1974).

Wood River made part of city of Dillingham. - When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part of the city of Dillingham. When the boundary commission's proposal for boundary change become effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968).

Election to choose boundary prohibited - A municipality could not ignore a Local Boundary Commission decision by holding an election permitting voters to choose between two boundaries, which essentially allowed the electorate to establish the boundary without regard to the commission's

action on reconsideration. *Lake & Peninsula Borough v. Local Boundary Comm'n*, 885 P.2d 1059 (Alaska 1994).

Quoted in *Graham v. City of Anchorage*, 364 P.2d 57 (Alaska 1961).

Stated in *Walters v. Cease*, 394 P.2d 670 (Alaska 1964).

Cited in *Pavlik v. State, Dep't of Community & Regional Affairs*, 637 P.2d 1045 (Alaska 1981).

Section 13. Agreements; Transfer Of Powers. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Decisions - Quoted in *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962).

Stated in *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971); *City of Homer v. Gangl*, 650 P.2d 396 (Alaska 1982).

Section 14. Local Government Agency. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

Cross References - The agency established in the executive branch to advise and assist local governments is the Department of Community and Regional Affairs (AS 44.47).

Decisions - Stated in *Walters v. Cease*, 394 P.2d 670 (Alaska 1964).

Section 15. Special Service Districts. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

